

# California Seeks to Protect Worker's Right Not to Sign Arbitration or Nondisclosure Agreements

AUGUST 27, 2018

Authors: [W. Eric Baisden](#)

A California bill prompted by the #MeToo movement to prohibit employers from requiring workers to sign arbitration or nondisclosure agreements as a condition of employment is headed to the desk of Gov. Jerry Brown for final approval.

The bill, known as AB 3080, does not prohibit arbitration and nondisclosure agreements across the board. Rather, it provides that employees, independent contractors, and applicants must enter into arbitration agreements voluntarily and that those who choose not to cannot be subject to retaliation or termination.

AB 3080 also would prevent employers from limiting the ability of workers to disclose instances of workplace sexual harassment or from participating in any harassment or discrimination investigation or proceeding. In other words, employers would no longer be able to impose confidentiality obligations on their employees or independent contractors with respect to claims of sexual harassment.

Although AB 3080 was intended to respond to sexual harassment claims, it would apply to all forms of discrimination, harassment, retaliation as well as wage and hour claims and any other claims brought under California Fair Employment and Housing Act ("FEHA") or the California Labor Code.

Any violation of the law would be a misdemeanor.

Gov. Brown has until September 30 to sign or veto the bill. In 2015, he vetoed a bill that would have outright banned the use of mandatory arbitration agreements as a condition of employment.

Even if Gov. Brown does sign AB 3080, it is likely to be challenged in court by employers as unenforceable under the Federal Arbitration Act, which the U.S. Supreme Court has repeatedly enforced.

We will continue to monitor the progress of AB 3080. Employers with California operations may want to begin reviewing their arbitration agreements and practices in light of these potential changes and be prepared to implement any new practices by January 1, when AB 3080 would go into effect if signed.

**For more information on this topic, contact a member of Benesch's [Labor & Employment Practice Group](#).**

Eric Baisden | [ebaisden@beneschlaw.com](mailto:ebaisden@beneschlaw.com) | 216.363.4676

Rick Hepp | [rhepp@beneschlaw.com](mailto:rhepp@beneschlaw.com) | 216.363.4657